

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

BECKLEY

THOMAS WOODROW NISER

Plaintiff,

v.

Case No. 5:07-cv-00005

STATE OF WEST VIRGINIA and
G.D. WILLIAMS, State Police Officer,

Defendants.

PROPOSED FINDINGS AND RECOMMENDATION

This matter is assigned to the Honorable Thomas E. Johnston, United States District Judge, and it is referred to the undersigned United States Magistrate Judge for submission of proposed findings and a recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B).

Plaintiff's Complaint has been pending in this court without payment of any filing fee since January 4, 2007.¹ By Order entered May 9, 2007, the undersigned granted Plaintiff's Application to Proceed Without Prepayment of Fees and Costs, but ordered the payment of an initial partial filing fee of \$12.40.

¹ Plaintiff's hand-written Complaint was difficult to read, and the Clerk's Office misread his last name as "Riser" instead of "Niser." This error caused a delay in obtaining a properly executed Application to Proceed Without Prepayment of Fees from Plaintiff until April 13, 2007 because Plaintiff had not received the court's mail at the Southern Regional Jail, where he was then incarcerated.

On or about October 11, 2007, the undersigned's staff determined that Plaintiff had been transferred to the Huttonsville Correctional Center. Plaintiff had not paid the initial partial filing fee at that time. Thus, on October 11, 2007, the undersigned entered an Order directing Plaintiff to complete two Authorizations to Release Institutional Account Information and to Pay Filing Fee, to file one Authorization form with the Clerk's Office by October 31, 2007, and to provide the other Authorization form to the appropriate official at the Huttonsville Correctional Center, in order to coordinate payment of the initial partial filing fee. Plaintiff was advised that the failure to return an executed Authorization form to the Clerk's Office by October 31, 2007 may result in the undersigned's recommendation to the presiding District Judge that Plaintiff's Complaint be dismissed without prejudice for failure to prosecute this civil action.

As of today's date, Plaintiff has not filed an executed Authorization form, and the Clerk's Office has not received the initial partial filing fee. Plaintiff is presently listed on the West Virginia Division of Corrections website as being incarcerated at the Huttonsville Correctional Center. There is no indication that any mail sent to Plaintiff at the Huttonsville Correctional Center has been returned to the court as undeliverable.

For these reasons, the undersigned proposes that the presiding District Judge **FIND** that Plaintiff has wholly failed to prosecute

this civil action. Accordingly, it is respectfully **RECOMMENDED** that the presiding District Judge **DISMISS** this matter without prejudice for failure to prosecute.

Plaintiff is notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable Thomas E. Johnston, United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(e) and 72(b), Federal Rules of Civil Procedure, Plaintiff shall have ten days (filing of objections), and then three days (service/mailing), from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of this Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted by the presiding District Judge for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be served on Judge Johnston and this Magistrate Judge.

The Clerk is directed to file this Proposed Findings and Recommendation and to mail a copy of the same to Plaintiff.

December 3, 2007

Date

Mary E. Stanley
Mary E. Stanley
United States Magistrate Judge